

ORIGINAL

Decision No. 44526

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
HAROLD H. McBRIDE (H. McBRIDE DELIVERY
SERVICE) for a certificate of public
convenience and necessity to operate
a freight service, as a common carrier,
between Fresno, on the one hand, and
Kingsburg, Monson, Orosi and Orange
Cove, on the other hand and intermediate
points.

Application No. 30553

Robert S. Crossland, for applicant.

R. Edward Purton, for Valley Express Company, Valley Motor
Lines, Inc., Triangle Transfer and Reedley-Selma-Kingsburg
Truck Lines, protestants.

Douglas Brookman, for California Motor Express, Ltd., and
California Motor Transport Co., Ltd., protestants.

William Meinhold and W. A. Gregory, Jr., for Southern Pacific
Company and Pacific Motor Trucking Company, protestants.

William F. Brooks, by Samuel F. Hollins, and John B. Kremer,
for The Atchison, Topeka and Santa Fe Railway Company and
Santa Fe Transportation Company, protestants.

O P I N I O N

Applicant requests a certificate of public convenience
and necessity authorizing transportation of general commodities,
with certain exceptions, ⁽¹⁾ between Fresno and points south and
⁽²⁾ southeast. The application was submitted on briefs after five
days of hearing ending November 19, 1949, before Commissioner
Potter and Examiner Gregory. Protestants include the rail carriers
and their subsidiary truck lines, together with the principal long

(1) Exceptions are: livestock, perishables, groceries, uncrated
new furniture, used household goods, petroleum products in
tank trucks, flowers and explosives.

(2) Kingsburg, Monson, Orosi, Orange Cove, and intermediate points
including Calwa, Malaga, Fowler, Selma, Del Rey, Parlier,
Reedley, Dinuba, Cutler, Sultana, Primero, Centerville and
Sanger.

distance and local certificated highway carriers operating in all or portions of the territory applicant seeks to serve.

Applicant, after some 15 years of experience driving trucks in line haul and pickup and delivery operations, in 1947 started his own local truck business in Dinuba. By 1949 he had established a regular daily service for the transportation of a wide list of general commodities⁽³⁾ moving from Fresno supply firms to merchants in communities south and southeast of Fresno. Daily service (except Sunday) is maintained to Fowler, Selma, Kingsburg, and Dinuba. Frequency of operations to points farther east, including Sanger, Parlier and Reedley, depends on freight offerings for these towns. The bulk of the traffic (about 2½ tons per day) moves into the Fowler-Selma-Kingsburg-Dinuba area. Return traffic is negligible.

Applicant stresses his ability to receive freight up to 4:00 or 4:30 p.m. at Fresno and to deliver shipments to stores or to consignees' homes the same day, if requested to do so, or in any event between 8:00 and 10:00 a.m. the next day. He maintains a telephone listing at Fresno where shippers may call up to 3:30 p.m. He will also make a later pickup for the same consignor upon request. Applicant and his brother drive the trucks and rendezvous on the outskirts of Fresno between 4:30 and 5:00 p.m. to exchange loadings so as to avoid circuitous routing of shipments. After deliveries are completed the following morning the trucks return to Fresno. It is this type of service that applicant has been performing for about two years under radial, contract and city carrier permits and

(3) Commodities carried are principally auto and tractor parts and accessories, household appliances, hardware, electric and plumbing items, home furnishings, paint, wallpaper, new crated furniture, printing paper and supplies, musical instruments and building materials.

which he proposes to conduct in the future.

As of the time of the hearings, applicant conducted his business from his home in Dinuba with one Dodge tractor, two semi-trailers and a 1½ ton Ford truck. His mother keeps the books, assisted by a public accountant in Dinuba.

Applicant grossed \$26,030.71 from all operations from December, 1947, to September, 1949. His income statement shows expenses of \$16,918.14, with net revenue, before income taxes, of \$9,112.57 for the 21-month period. His indicated expenses, however, do not include the sum of \$10 per week paid to his mother for bookkeeping from August, 1948, to September, 1949, nor an item of \$150-\$200 per month for his own living expenses. His adjusted net revenue for the period, therefore, amounted to approximately \$5,000, or \$238 per month. His statement of financial condition, as of September 30, 1949, shows assets, including cash and vehicles, amounting to \$7,925.32, and current liabilities (including a balance due on the purchase of the Dodge truck) of \$1,971.72. McBride's parents testified they would loan him up to \$5,000 if he needed help in financing his operations.

The area applicant seeks to serve as a certificated carrier, extending about 30 miles south and east of Fresno, now is served collectively by a number of common carriers. None of these, with the exception of California Motor Express, Ltd. (hereafter called Cal Motor), serves the whole territory covered by applicant's proposal. Pacific Motor Trucking Company (hereafter called PMT), the Southern Pacific trucking subsidiary, in the month of July, 1949, (in which the volume of movement was a little greater than average) transported approximately 28,700 pounds of

less-than-carload freight, originating at Fresno, to Fowler, Selma, Kingsburg, Sanger and Reedley, and about 1,700 pounds to Fresno from Selma, Kingsburg, Sanger and Reedley. During the same month this carrier moved some 200 pounds of freight from Dinuba to Sanger and Reedley. Locations named in the application and served by PMT, except as indicated above, received no less-than-carload shipments via this carrier in July, 1949. PMT affords generally next morning delivery of shipments picked up at Fresno the previous afternoon destined to the points it serves in the area in question.

Similarly, Santa Fe Transportation Company (hereafter called Santa Fe) transported a total of 26,052 pounds of less-than-carload freight in August, September and October, 1949 (described as average months), originating at Fresno, to Cutler, Del Rey, Dinuba, Orange Cove, Orosi, Parlier, Reedley and Sultana. During the same period this carrier moved 120 pounds of freight to Fresno from Cutler and none from the other points mentioned destined to Fresno. All these points are included in applicant's proposal. Shipments originating at Fresno are picked up by the Railway Express Agency and are delivered the following morning from Santa Fe linehaul trucks leaving Fresno between 8 and 10 a.m.

Valley Express Company and its underlying highway common carrier, Valley Motor Lines, Inc., (hereafter referred to jointly as Valley), whose principal office is at Fresno, offer service on traffic originating at that point moving to Dinuba, Sultana, Orange Cove, Orosi, Cutler, Yettam and Monson. During July, 1949, Valley transported 105 shipments having a total weight of 27,090 pounds from Fresno to the points named. That month was a little heavier, tonnage-wise, than normal. Shipments are picked up in Fresno as late as 5:30 p.m., leave the following morning about 8 o'clock and

are delivered generally before noon.

Cal Motor offers service between Fresno and all points sought to be served by applicant as well as all intermediate points throughout the area in question. Shipments are picked up in Fresno as late as 6 p.m. and deliveries are commenced about 8 o'clock the following morning from trucks leaving the Fresno terminal at 7:30 a.m. Service is rendered six days a week from Fresno. Total weight of shipments originating in Fresno destined to points in the territory here involved, for a five-day period from October 3 to October 7, 1949, amounted to 68,518 pounds.⁽⁴⁾

PMT, Santa Fe, Valley and Cal Motor combine local shipments from and to Fresno with those from and to points beyond Fresno on their respective trucks operating between Fresno and the points covered by this application. The trucks are routed according to the carriers' convenience, so that destinations are not served in regular sequence nor at the same time each day.

Two local certificated carriers also offer service between Fresno and some of the points sought to be served by applicant. Reedley-Selma-Kingsburg Truck Line operates between Fresno, Fowler, Selma, Kingsburg, Del Rey, Reedley, Parlier and intermediate points. It utilizes the Huntington Stage Line terminal in Fresno where it has a telephone listing in its own name. During July, 1949, stated to be an average month, this carrier transported a total of 202,568 pounds of freight originating at Fresno to the points named and from some of the outlying points back to Fresno. Shipments are

(4) The total includes a few shipments to Woodlake, a point that applicant does not propose to serve.

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picked up between 8 a.m. and 11 a.m. Deliveries commence about 11:30 a.m. and are completed about 5 p.m. About one-third of the total freight handled by this carrier into the territory originates in Fresno.

The other local certificated carrier, Triangle Transfer, operates between Fresno, Sanger, Centerville, Clovis (not a point proposed to be served by applicant) and intermediate points. It makes use of Valley's Fresno terminal and has its own terminal at Sanger. During July, 1949, this carrier transported approximately 48,750 pounds of freight originating at Fresno to Sanger, including a few return movements to Fresno. Freight is picked up at Fresno by 10 o'clock in the morning and deliveries are completed about 3 p.m. This carrier also handles shipments originating on the Valley and Pacific Freight Lines systems for delivery from Fresno to final destination.

Applicant's proposal was supported by about 60 shippers and receivers of less-than-carload freight, chiefly merchants in Fresno and the various communities mentioned above,⁽⁵⁾ who stressed their need for expedited delivery of certain items, such as drugs, repair parts for farm and automotive machinery, and appliances. No real dissatisfaction with the services of the protesting carriers was expressed by those who also used the service of one or more of them in addition to McBride's. Many of the outlying merchants, however, indicated a desire for a service such as that offered by applicant, which would permit them to place an order late in the afternoon with their suppliers in Fresno and receive delivery either the same evening at their store or home, or in any event not later

(5) Applicant's witnesses were from the following communities: Fresno, Fowler, Selma, Kingsburg, Reedley, Parlier, Dinuba, Cutler, Orosi and Orange Cove.

than early the following morning. None of the protestants normally affords such a service, although it appears that they will give special attention to emergency or rush shipments when requested to do so.

(6)
Protestants' witnesses, on the whole, manifested satisfaction with the existing service afforded by the various carriers they used. Some, however, upon cross-examination, expressed the view that the type of service proposed by applicant might occasionally be helpful in emergencies.

A careful review of the evidence of record convinces us, and we find, that public convenience and necessity require that applicant be granted a certificate to operate as a highway common carrier. The type of service he proposes to render is desired by merchants located both along U. S. Highway 99 as far as Kingsburg as well as by those situated in communities to the east of that highway including Orange Cove, Orosi and Cutler. The record indicates that a substantial portion of this traffic consists of shipments of articles needed promptly by merchants or their patrons in widely separated communities. Without a service such as is proposed here by applicant, such articles frequently move by stage, by parcel post, or by private automobiles of customers or merchants who come to Fresno to pick up the goods themselves. The protesting carriers either do not desire to handle such traffic, or else are not in a position to respond to requests for expedited service to the same extent as is applicant.

We believe that there is a place in the field of

(6) Protestants witnesses, other than operating officials, were from the following communities: Fresno, Orange Cove, Reedley, Selma and Sanger.

certificated highway common carriage for the small operator who specializes in local distribution of general commodities. In this respect, applicant's proposed service is not substantially unlike those of Triangle Transfer or Reedley-Selma-Kingsburg Truck Line, except that he contemplates serving a more extensive area than either of those two carriers and will also operate on different schedules.

As the record does not indicate a substantial need for the transportation by applicant of shipments weighing more than 4000 pounds, the certificate issued herein will be restricted accordingly.

Harold H. McBride is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearing having been held on the above-entitled and numbered application, evidence and briefs having been received and considered, the matter having been submitted, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

1. That Harold H. McBride be and he hereby is granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, as amended, for the transportation of general commodities, except livestock, perishables, groceries, uncrated new furniture, used household goods, petroleum products in tank trucks, flowers and explosives, between Fresno, on the one hand, and Kingsburg, Dinuba, Monson, Yettam, Orosi and Orange Cove, on the other hand, and all intermediate points, over the routes hereinafter described, and subject to the following restriction:

a. Applicant may not transport any shipment weighing in excess of 4000 pounds.

2. That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days after the effective date hereof.
- b. Within 60 days after the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing in triplicate and concurrently making effective, appropriate tariffs and time tables.
- c. Subject to the authority of this Commission to change or modify them by further order, applicant shall conduct operations pursuant to the certificate herein granted over and

along the following routes:

Route I. Commencing at Fresno, thence via U. S. Highway 99 to Kingsburg; thence via Sanger-Kingsburg Highway, Clark Avenue and Bethel Avenue to intersection of Bethel Avenue and Elkhorn Avenue, returning to Kingsburg via same route; thence via Conejo Avenue to intersection of Conejo Avenue and Kings River Avenue; thence over alternate routes to Cutler, Orosi, Monson and Yettam via Conejo Avenue, Elkhorn Avenue, Kamm Avenue, Mountain View Avenue, Kings River Avenue, Alta Avenue, Crawford Avenue, Hill Avenue and Dinuba Boulevard.

Route II. Commencing at Fresno, thence via Ventura Avenue and Sanger-Kingsburg Highway to Sanger, or via Ventura Avenue to Minkler; thence via Frankwood Avenue or Reed Avenue to Reedley; thence via Manning Avenue to Primero; thence via Dinuba Boulevard to Orosi; also, in the area of Reedley, Primero, Orosi and Dinuba via Dinuba Avenue to Alta Avenue and Crawford Avenue; thence via Alta Avenue and Crawford Avenue between Mountain View Avenue and Manning Avenue; also, from Reedley via Dinuba Avenue, Columbia Avenue, Button Willow Avenue, Floral Avenue and Alta Avenue to Dinuba; also, from intersection of Frankwood Avenue and Adams Avenue via Adams Avenue and Hill Avenue to Manning Avenue, and from intersection of Hill Avenue and Creek Road via Creek Road to Orange Cove.

Route III (Alternate). Commencing at Fresno, thence via U. S. Highway 99 and Jensen Avenue to Sanger; thence via Sanger-Kingsburg Highway to Adams Avenue; thence over any of the following routes:

- a. Via Adams Avenue, Mendocino Avenue and Parlier Avenue to Parlier.
- b. Via Adams Avenue and Tarn Avenue to Parlier.
- c. Via Adams Avenue, Hill Avenue and Sumner Avenue to Orange Cove.
- d. Via Adams Avenue and Lac Jac Avenue to Parlier; thence via Manning Avenue to Reedley.

Route IV. Commencing at Fresno, thence via U. S. Highway 99, Central Avenue, DeWolf Avenue, and Washington Avenue to McCall Road; thence over any of the following routes:

- a. Via Washington Avenue and Tarn Avenue to Parlier.
- b. Via Washington Avenue, Sanger-Kingsburg Highway and Adams Avenue to Parlier.

- c. Via Washington Avenue and Del Rey Avenue to Del Rey; thence via Del Rey Avenue to Adams Avenue.
- d. From the intersection of McCall Road and Adams Avenue via McCall Road and Manning Avenue to Parlier.

Route V. Commencing at Fresno, thence via U. S. Highway 99 and Washington Avenue to McCall Road; thence over any of the routes described in Route IV.

Route VI. Commencing at Fresno, thence via U. S. Highway 99 and Adams Avenue to Fowler; thence via Adams Avenue and Tarn Avenue to Parlier.

Route VII. Commencing at Fresno, thence via U. S. Highway 99 and Manning Avenue to Parlier and Reedley; also, between Adams Avenue and Conejo Avenue via Mendocino Avenue.

Route VIII. Commencing at Fresno, thence via U. S. Highway 99 and Rose Avenue to Selma; thence via Rose Avenue, Lac Jac Avenue, Huntsman Avenue and Reed Avenue to Reedley; also, between Rose Avenue and Conejo Avenue via Zediker Avenue.

Route XI. Commencing at Fresno, thence via U. S. Highway 99 and Mountain View Avenue to Dinuba.

Return to Fresno via any of the routes described in Routes I to XI above.

The effective date of this order shall be 20 days after the date hereof.

Dated at San Francisco, California, this 11th day of July, 1950.

A. B. Inidiasax
Justus J. Casner
Walter Powell
Harold Hula
Kenneth Potter
 COMMISSIONERS